

KERN VALLEY STATE PRISON  
P.O. BOX 5101  
DELANO, CA 93216

new  
555

FILED

EC JUL -9 PM 2:56

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CV 08 3297

GEORGE FLORES  
Plaintiff,

E-filing

CASE NO.

vs.

COMPLAINT (PR)

warden, EVANS, sued  
Individually;

42 U.S.C. § 1983

CAPT. PONDERS, sued  
Individually;

CRUEL AND UNUSUAL  
PUNISHMENT IN VIOLAT-  
ION OF EIGHTH AMEND-  
MENT AND FOURTEENTH  
AMENDMENTS

LT. CEJAYA, sued Individually;

SGT. ATCHLEY, sued Individually;

CORRECTIONAL OFFICER J. RODRIGUEZ,  
sued Individually;

And Does 1-10 Inclusive  
Defendants

DEMAND FOR JURY TRIAL

A. INTRODUCTION

1. Plaintiff, a prisoner of the state of California,  
brings this damages action to redress Defendants'  
violation of his constitutional right to be free from  
cruel and unusual punishment.

2. On March 19, 2007, Defendants maliciously and  
sadistically used excessive force against Plaintiff  
while Plaintiff was attempting to comply to staff  
orders to prone out on cell floor at Salinas  
Valley State Prison in Soledad, California. Plaintiff  
was injured as a proximate cause of Defend-  
ant(s) action.

//

08-3297-RMW

1 3. Plaintiff seeks damages pursuant to 42 U.S.C. §  
2 1983, and the Eighth and Fourteenth Amendments  
3 of the United States Constitution. Plaintiff also  
4 asserts pendent state claims which arose out  
5 of the same transaction or occurrence.

6 B. JURISDICTION AND VENUE

7 4. Plaintiff has suffered an injury that is traceable  
8 to the actions of the defendants, and the action  
9 is a case or controversy over which this court  
10 has the jurisdiction under Article III of the  
11 United States Constitution.

12 5. This case is brought pursuant to 42 U.S.C. § 1983  
13 with pendent state claim. Jurisdiction is based  
14 upon 28 U.S.C. §§ 1331 and 1343. This court has pendent  
15 jurisdiction over state law claims.

16 6. Venue is proper in this court under 28 U.S.C. §  
17 1391(b) because plaintiff's claim for relief arose  
18 in this district.

19 7. Plaintiff has complied with the California Claims  
20 Statute, California Government Code Section 910  
21 et seq. and with the Prison Litigation Reform  
22 Act of 1991 ("PLRA") by exhausting the claim to  
23 the third (and final) level of appeal.

24 C. INTRADISTRICT ASSIGNMENT

25 8. Plaintiff claims for relief arose in Salinas  
26 Valley State Prison which is located in the city of  
27 Soledad, and the county of Monterey, in the  
28 state of California. United States District

1 Plaintiff. AS SUPERVISING OFFICER HE /OR SHE  
2 COULD HAVE ORDERED OFFICERS TO CEASE IN ACTIONS  
3 AGAINST PLAINTIFF. DEFENDANT ATCHLEY FAILURE  
4 TO PROPERLY INTERVENE AND SUPERVISE SUB-  
5 ORDINATES WAS A PROXIMATE CAUSE OF  
6 PLAINTIFF INJURIES.

7 14. DEFENDANT J. RODRIGUEZ WAS, AT ALL TIMES  
8 MENTIONED HEREIN, A CORRECTIONAL OFFICER ON  
9 "CHARLIE FACILITY" AT SALINAS VALLEY STATE PRISON.  
10 HE /OR SHE IS SUED IN HIS /OR HER INDIVIDUAL  
11 CAPACITY. AT ALL TIMES MENTIONED HEREIN,  
12 J. RODRIGUEZ ACTED WITHIN THE COURSE AND  
13 SCOPE OF HIS /OR HER EMPLOYMENT AND UNDER  
14 COLOR OF LAW. DEFENDANT RODRIGUEZ USED  
15 THREE (3) CONTAINERS OF "OLEORESIN CAPSICUM"  
16 SPRAY IN PLAINTIFF'S FACE, AND VIOLENTLY  
17 YANKED PLAINTIFF'S LEG WITH ENOUGH  
18 FORCE TO CAUSE DAMAGE TO PLAINTIFF'S  
19 TENDON. BY USING EXCESSIVE O.C. SPRAY  
20 AND VIOLENTLY YANKING PLAINTIFF'S LEG  
21 DEFENDANT RODRIGUEZ PROXIMATELY  
22 CAUSED THE INJURIES AND DAMAGES SUFF-  
23 ERED BY PLAINTIFF.

24 15. DOES 1-10 WAS, AT ALL TIMES MENTIONED  
25 HEREIN, MEDICAL STAFF AND CORRECTIONAL  
26 STAFF WHO FAILED TO ALLOW PLAINTIFF  
27 TO PROPERLY AND FULLY WASH OFF O. C.  
28 SPRAY.

1 O.C. SPRAY FOR APPROXIMATELY 45 MINUTES  
2 AT WHICH TIME PLAINTIFF WAS ALLOWED TO  
3 RISE WITH MINIMUM WATER, DESPITE REPEATED  
4 REQUEST TO SUFFICIENTLY WASH O.C. SPRAY  
5 FROM EYES AND BODY PLAINTIFF WAS MADE  
6 TO SUFFER EFFECTS OF O.C. SPRAY FOR  
7 APPROXIMATELY A WEEK. PLAINTIFF WAS  
8 UNABLE TO SLEEP DUE TO O.C. SPRAY BURN-  
9 ING EFFECT TO EYES, DESPITE REPEATED  
10 REQUEST FOR MEDICAL ATTENTION FOR  
11 LOWER ABDOMINAL PAIN, AND LEFT TENDON.  
12 17. THE PHYSICAL ASSAULT TO PLAINTIFF'S  
13 PERSON WAS UNWARRANTED, AND WAS A  
14 VIOLATION OF STATE LAW AND PROCEDURES FOR  
15 USE OF FORCE.  
16 18. WHEN PLAINTIFF WAS ASSAULTED, HE WAS  
17 NOT BEING AGGRESSIVE OR COMBATIVE  
18 TOWARDS CORRECTIONAL STAFF OR ANY OTHER  
19 VIOLENT ACTIVITY.  
20 19. CORRECTIONAL OFFICER RODRIGUEZ ASSAULT  
21 UPON PLAINTIFF WAS UNNECESSARY, UNWARR-  
22 ANTED AND CONSTITUTED AN UNLAWFUL USE  
23 OF EXCESSIVE FORCE WHICH PROXIMATELY  
24 CAUSED PLAINTIFF GREAT PAIN AND SUFFER-  
25 ING. FURTHER, THE PURPOSEFUL AND INTENTIONAL  
26 ASSAULT WAS WITHOUT ANY LEGAL JUSTIFI-  
27 CATION WHATSOEVER.  
28 //

1 20. PLAINTIFF SUFFERED A TORN LOWER AB-  
 2 domen muscle, and BURNING SENSATION  
 3 TO EYES FOR APPROXIMATELY A WEEK.

4 FIRST CAUSE OF ACTION  
 5 (VIOLATION OF 42 U.S.C. § 1983)

6 DENIAL OF RIGHTS UNDER THE EIGHTH AND  
 7 FOURTEENTH AMENDMENTS OF THE UNITED STATES  
 8 CONSTITUTION

9 21. PLAINTIFF INCORPORATES BY REFERENCE AND  
 10 RE-ALLEGES AS THOROUGHLY SET FORTH HEREIN  
 11 THE ALLEGATIONS OF PARAGRAPHS 1 THROUGH 20.

12 22. THIS IS AN ACTION AT LAW TO REDRESS  
 13 THE DEPRIVATION UNDER THE COLOR OF STATE  
 14 ORDINANCES, REGULATIONS, CUSTOMS OR  
 15 USAGE OF RIGHTS, PRIVILEGES AND IMMUNITIES  
 16 SECURED TO PLAINTIFF BY THE EIGHTH AND  
 17 FOURTEENTH AMENDMENTS TO THE CONSTITUTION  
 18 OF THE UNITED STATES AND ARISING UNDER  
 19 THE LAWS AND STATUTES OF THE STATE OF  
 20 CALIFORNIA.

21 23. DURING ALL TIMES MENTIONED HEREIN, THE  
 22 SAID DEFENDANTS AND EACH OF THEM, SEPARATELY  
 23 AND IN CONCERT, ACTED UNDER COLOR OF LAW, TO  
 24 WIT, UNDER THE STATUTE, ORDINANCE, REGUL-  
 25 ATIONS AND CUSTOMS AND USAGES OF THE  
 26 STATE OF CALIFORNIA. EACH OF THE SAID DE-  
 27 FENDANTS, SEPERATELY AND IN CONCERT, ACTED  
 28 OUTSIDE OF THE SCOPE OF HIS OR HER JURISDICTION  
 AND WITHOUT AUTHORIZATION OF LAW,

1 WILLFULLY and KNOWINGLY TO DEPRIVE PLAINTIFF  
 2 OF HIS RIGHTS TO FREEDOM FROM CRUEL and  
 3 UNUSUAL PUNISHMENT FROM STATE OCC-  
 4 asioned HARM, INJURY and DAMAGES TO  
 5 BODILY INTEGRITY.

6 24. AS a direct and PROXIMATE RESULT OF  
 7 THE VIOLATION OF PLAINTIFF'S PRIVILEGES and  
 8 IMMUNITIES SECURED TO HIM BY THE LAWS  
 9 OF THIS STATE and nation. PLAINTIFF WAS  
 10 INJURED and DAMAGED HEREIN.

11 SECOND CAUSE OF ACTION  
 12 PENDENT STATE CLAIM  
 13 ASSAULT AND BATTERY -- STATE TORT LAW

14 25. PLAINTIFF INCORPORATES BY REFERENCE PARA-  
 15 GRAPHS 1 THROUGH 24.

16 26. THE UNJUSTIFIED and UNNECESSARY INJURY OF,  
 17 PLAINTIFF GEORGE FLORES, MARCH 19, 2007,  
 18 CONSTITUTED an intentional ASSAULT and  
 19 BATTERY PROHIBITED BY CALIFORNIA STATE LAW.

20 27. DEFENDANTS, THEIR AGENTS, SERVANTS and  
 21 EMPLOYEES INTENTIONALLY, VIOLENTLY, FORCIBLY  
 22 and OFFENSIVELY ASSAULTED and BATTERED  
 23 PLAINTIFF WITHOUT ANY LAWFUL GROUNDS  
 24 THEREFORE WHILE ACTING OUTSIDE THE SCOPE OF  
 25 THEIR EMPLOYMENT.

26 28. PLAINTIFF did NOT GIVE HIS CONSENT TO THE  
 27 UNLAWFUL TOUCHING ASSAULT and BATTERY  
 28 AGAINST HIS PERSON.

1 29. BY REASON OF THE BATTERY AGAINST HIS PERSON  
 2 PLAINTIFF SUFFERED PHYSICAL PAIN, HUMILIATION  
 3 AND EMOTIONAL DISTRESS.

4 THIRD CAUSE OF ACTION  
 5 NEGLIGENCE IN USE OF EXCESSIVE FORCE

6 30. PLAINTIFF INCORPORATES BY REFERENCE AND RE-  
 7 ALLEGES AS THOROUGHLY SET FORTH HEREIN THE  
 8 ALLEGATIONS OF PARAGRAPHS 1 THROUGH 29.

9 31. DEFENDANTS, THEIR AGENTS, SERVANTS AND EMPLOYEES  
 10 NEGLIGENCELY, CARELESSLY AND RECKLESSLY PERFORMED  
 11 THEIR CORRECTIONAL OFFICER DUTIES, IN THAT, THEY  
 12 FAILED TO USE CARE IN THE PERFORMANCE OF THEIR  
 13 CORRECTIONAL OFFICER DUTIES AS A REASONABLE  
 14 PRUDENT AND CAREFUL CORRECTIONAL OFFICER  
 15 WOULD HAVE USED UNDER SIMILAR CIRCUM-  
 16 STANCES; THAT THEY CARELESSLY, RECKLESSLY  
 17 AND NEGLIGENCELY ASSAULTED PLAINTIFF  
 18 DESPITE THE FACT THAT HE WAS NOT COMBATIVE,  
 19 OR DEMONSTRATING ANY AGGRESSIVE BE-  
 20 HAVIOR.

21 32. BY REASON OF THE AFORESAID, PLAINTIFF  
 22 WAS INJURED IN BODY AND MIND AND STILL  
 23 SUFFERS EMOTIONAL DISTRESS.

24 33. BY REASON THE AFORESAID, PLAINTIFF HAS  
 25 BEEN DAMAGED.

26 WHEREFORE, PLAINTIFF PRAYS JUDGMENTS AGAINST  
 27 DEFENDANTS, AND EACH OF THEM AS FOLLOWS:

28 //

- 1 (1) COMPENSATORY DAMAGES OF \$1,000,000<sup>00</sup>
- 2 (2) PUNITIVE DAMAGES OF \$1,000,000.<sup>00</sup>
- 3 (3) ATTORNEY'S FEE AND COSTS OF THIS SUIT
- 4 HEREIN INCURRED.
- 5 (4) FOR SUCH OTHER AND FURTHER RELIEF AS THE
- 6 COURT MAY DEEM PROPER.

7 PLAINTIFF REQUEST A JURY TRIAL

8  
9 DATED: May. 19, 2008

10  
11 BY: George Flores

12 GEORGE FLORES

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

STATE OF CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION  
INMATE APPEALS BRANCH  
P. O. BOX 942883  
SACRAMENTO, CA 94283-0001

**DIRECTOR'S LEVEL APPEAL DECISION**

Date: APR 04 2008

In re: Flores, H-62771  
Salinas Valley State Prison  
P.O. Box 1020  
Soledad, CA 93960-1020

IAB Case No.: 0718860

Local Log No.: SVSP 07-04178

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner Michael Jensen, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

**I APPELLANT'S ARGUMENT:** It is the appellant's position that when he attended Institution Classification Committee (ICC) on September 13, 2007, Correctional Captain (Capt.) Ponder did not want to discuss the CDC Form 115, Rules Violation Report (RVR) he had received. The appellant stated he believes Capt. Ponder aggravated the Security Housing Unit (SHU) term by imposing the brackets of 6-12-18 months rather than the normal 2-3-4 months for a "gassing." The appellant believes staff under Capt. Ponder are aggressive and he should have been found guilty of an RVR based upon the facts that occurred, not on the title of the RVR. The appellant requests Capt. Ponder be removed from his position.

**II SECOND LEVEL'S DECISION:** The reviewer found that the appellant was provided the opportunity to discuss the issues of his RVR during ICC on September 13, 2007. The Second Level of Review (SLR) indicated that after the appellant had expressed himself concerning the RVR Capt. Ponder instructed him to utilize the appeal process. The appeal was denied by the SLR.

**III DIRECTOR'S LEVEL DECISION:** Appeal is denied.

**A. FINDINGS:** The appellant contends his rights were violated during the ICC of September 13, 2007. The appellant claimed he was assessed a SHU term longer than the RVR warranted.

The appellant failed to include a copy of the September 13, 2007, ICC CDC Form 128-G, Classification Chrono with his appeal and failed to include a copy of the RVR. Without these documents the Director's Level of Review (DLR) finds it difficult to support the appellant's appeal complaint. California Code of Regulations, Title 15, Section (CCR) 3084.3(c) states that the inmate must include supporting documentation towards his complaint. The DLR has determined the appellant has failed to support his complaint against Capt. Ponder and failed to demonstrate his rights were violated by the assessment of the SHU term. The DLR shall not modify the SLR.

**B. BASIS FOR THE DECISION:**  
CCR: 3341.5, 3375.2

**C. ORDER:** No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief  
Inmate Appeals Branch

cc: Warden, SVSP  
Appeals Coordinator, SVSP

# "Emergency Complaint" "CDC 1858 Complaint rights and responsibility form."

Case # 00 CV-03297 RWW Document 1 Filed 01/09/2008 Page 70 of 128

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

## INMATE PAROLEE APPEAL FORM

CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1# of 6th

1. SVSP-D-07-04-178

12

2.

2.

You may appeal any policy, action or decision which has a significant adverse effect upon you. With the exception of Serious CDC 115a, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME: George Flores

NUMBER: H-62771

ASSIGNMENT

UNIT/ROOM NUMBER

10-9-111

A. Describe Problem: On 09-13-07 I went to Committee for sed. "Batter on a Peace Officer" (by gassing). I tried to talk and discuss this situation with Captain G. Ponderis, when I wasn't given the chance to speak on my behalf. I was dismissed. It's an on going thing to try and speak, and only not to be heard from. I was found guilty of a "Assult on a non-inmate with physical force insufficient to cause serious injury." It carries a <sup>Low Exp/High</sup> 06/12/15. I feel that once again I'm being punished for one big over exaggeration by S.V.S.P administration. Just because Captain G. Ponderis can. I should have only been given the charge of what Correctional Officers said in there report of "sed" incident report still wrong. Throwing a caustic substance on a non-inmate. And carries a <sup>Low Exp/High</sup> 07/03/04 which is closer to a gassing than the other. What's the point of committee if we can't be heard. I believe Captain G. Ponderis should be removed from his position, he's very unprofessional and just angry. 1st CDC 1858 form

If you need more space, attach one additional sheet.

B. Action Requested: Captain G. Ponderis, creates a very angry and hostile environment for no reason, rather than because he can. I request he be removed from his position. He enjoys to see prisoners harmed in his aggressive tactics allowed and conducted by his correctional officers. And do not want any retaliation for this "Emergency Complaint" and attached C.D.C 1858 complaint rights and responsibility form.

Inmate/Parolee Signature: George Flores

H-62771

REC'D OCT 6 2007

Date Submitted: 09-16-07

C. INFORMAL LEVEL (Date Received: )

Staff Response:

REC'D SEP 20 2007

BYPASS

Staff Signature:

Date Returned to Inmate:

2. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Prono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BYPASS

Signature:

Date Submitted:

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

9/27/0 repeated by SVSP using Authority as a 8/c

First Level ☐ Granted ☐ P. Granted ☒ Denied ☐ OtherE. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: 10.9.01 Due Date: 11.19.01Interviewed by: CC11 Hughessee attached memorandum.SVSP INMATE APPEALS OFFICE  
RECEIVED COMPLETED RESPONSE ONStaff Signature: [Signature] Rankin Title: CWOT 1<sup>ST</sup> LVL ☒ 2<sup>ND</sup> LVL ☐  
Division Head Approved: [Signature] Title: ACW Date Completed: 11-25-01  
Signature: [Signature] Title: ACW Returned: 11-25-01  
Date to Inmate: 11-25-01F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response. I received 602 back on 11-25-01. Dissatisfied with results. Along with being dismissed from Committee room 09-13-01 and unable to be heard or speak of "Sed" incident 115. I was threatened with SN yard. And I was told when I'm done with my shu term, I will be placed on C-yard BMU placement, which neither of these threats have anything to do with my Committee hearing what so ever. Captain Ponders tactics used on C-yard are only meant to punish prisoners, and should be removed from C-yard facility.  
Signature: George Flores H-62771 RECEIVED NOV 29 2007 Date Submitted: 11-25-01Second Level ☐ Granted ☐ P. Granted ☒ Denied ☐ OtherG. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 11-29-01 Due Date: 12.28.01☒ See Attached LetterSignature: [Signature] Rankin Date Completed: 12.14.01Warden/Superintendent Signature: [Signature] CDW (21) RECEIVED DEC 18 2007

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response. Dissatisfied with 2nd level response. I want Capt. G. Ponders removed from C-Yard facility because he knows exactly what his Correctional Officers are doing in tactics used only to punish, any time administration uses its authority maliciously, sadistically, to punish and cause prisoners harm is a violation of my 5th Amendment rights to be free from cruel and unusual punishment. It's always a violation of a prisoners rights when in this case the minimal force wasn't used, there was no security threat or threat to any prisoner of Correctional Officer at that prison by me or cell by of that time or any other time. Thank you.

Signature: George Flores H-62771 Date Submitted: 12-27-01For the Director's Review, submit all documents to: Director of Corrections  
P.O. Box 942883  
Sacramento, CA 94283-0001  
Attn: Chief, Inmate AppealsAlso Added one 5# First level response 1st Second level response. Total #1 through #6...DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☒ Denied ☐ Other☒ See Attached Letter

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

CDC 1858 (2/97)

## RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes.

**Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:**

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE. [An inmate/parolee who makes a complaint against a departmental peace officer, knowing it is false, may be issued a serious disciplinary rule violation, in addition to being prosecuted on a misdemeanor charge.]

#2 of 16

COMPLAINANT'S PRINTED NAME George Flores H-6211	COMPLAINANT'S SIGNATURE <i>George Flores</i>	DATE SIGNED 09-16-07
INMATE/PAROLEE PRINTED NAME George Flores	INMATE/PAROLEE'S SIGNATURE <i>George Flores</i>	CDC NUMBER H-6211
RECEIVING STAFF'S PRINTED NAME <i>Captain G. Ponder</i>	RECEIVING STAFF'S SIGNATURE <i>Captain G. Ponder</i>	DATE SIGNED 09-16-07

## DISTRIBUTION:

ORIGINAL -

Public - Institution Head/Parole Administrator

Inmate/Parolee - Attach to CDC form 602

Employee - Institution Head/Parole Administrator

COPY - Complainant

I thought Capt. G. Ponder's had to sign it? Some one crossed out his name after the 2nd level response?

16.

## SHU TERM ASSESSMENT WORKSHEET

CDCR 629-A (Rev. 3/96)

CDCR NUMBER

H62771

NAME (Last, First, MI)

FLORES, GEORGE

INSTITUTION

Salinas Valley State Prison

UNIT

ASU

## 1. RULE VIOLATION RESULTING IN SHU TERM ASSESSMENT

(If more than one SHU assessable offense and no SHU term has been established, use most serious as base term and less serious as aggravation.)

- a. Rule No. \_\_\_\_\_ Date Issued 3/18/2007 Title Battery on a Peace Officer C07-03-0019
- b. Specific Act Assault on a non-inmate with physical force insufficient to cause serious injury.  
(Must be an offense on SHU Term Assessment Chart.)
- c. List range of months for the offense using  
SHU Time Computation Table..... 6 12 18  
LOW EXP HIGH
- d. Enter "expected" (mid-range) years, months, days of confinement..... 1 YR MO DAYS

## 2. FACTORS IN MITIGATION AND AGGRAVATION

(Enter "NONE" for item 2c or indicate amount of time. Describe factors and document sources. Use only factors listed in the DOM 62050 or concurrent offenses.)

- a. Mitigating Factors. Time subtracted for mitigations..... - 1 YR MO DAYS  
1) The inmate has not been involved in prior acts of the same or of similar nature.  
2)  
3)
- b. Aggravating Factors. Time added for aggravations..... + NONE YR MO DAYS  
1)  
2)  
3)
- c. Total time added or subtracted..... = YR MO DAYS  
-1  
11  
11

#3 of #6

## 3. TOTAL SHU CONFINEMENT TIME ASSESSED.....

(Subtract or add time for mitigation or aggravation to expected, item 1d plus or minus 2c)

## 4. DATE OF ADMINISTRATIVE SEGREGATION CONFINEMENT/VIOLATION.....

Confinement Date

2007 3 19  
YR MO DAY

## 5. MAXIMUM DATE OF RELEASE FROM SHU.....

(Add total time assessed to date of confinement, item 3 plus 4)

2008 2 19  
YR MO DAY

## 6. MINIMUM DATE CONFINEMENT TIME TO SERVE.....

(Enter 75% of the total SHU time (item 3) using the SHU Time Computation Table)

8 8  
YR MO DAYS

## a. Date of confinement/violation (item 4).....

Confinement Date

2007 3 19  
YR MO DAY

## 7. MINIMUM ELIGIBLE RELEASE DATE (MERD).....

(Add the minimum SHU time to the date of confinement, item 6 plus 6a)

2007 11 27  
YR MO DAY

## 8. FORFEITURE OF GOOD CONDUCT CREDITS FOR SUBSEQUENT MISCONDUCT

(Enter "NONE" for item 8a or indicate the amount of time lost and describe and document the misconduct for which credit is being forfeited). SHU inmates may forfeit up to 45 days of clean conduct credits for each disciplinary infraction that is not serious enough to warrant the assessment of a subsequent or concurrent SHU term. Such forfeiture may be assessed against credits already earned or future credits.

- a. Time forfeited for CDC 115 - Dated: 4/12/2007 ..... 1 15  
YR MO DAYS

- b. ADJUSTED MERD Cannot Exceed MAXIMUM..... 2008 1 12  
YR MO DAY

(Add the amount of time forfeited to the prior MERD, item 7 plus 8a)

NAME AND TITLE OF STAFF COMPUTING TERM

DATE SIGNED

DATE ICC ESTABLISHED TERM

## CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

NAME: FLORES

CDCR #: H62771

BED: D-9-111L

## COMMITTEE ACTION SUMMARY

REFER TO CSR FOR SHU AUDIT & RX TX COR-SHU / CCI-SHU, ASSESS & IMPOSE A 11 MONTH MITIGATED SHU TERM WITH A MERD OF 1/12/08 FOR RVR C07-03-0019, 'BATTERY ON A PEACE OFFICER', DATED 3/19/07, RETAIN ASU PENDING CSR REVIEW & TRANSFER, CONTINUE MAX CUSTODY, DID EFFECTIVE 8/15/07, INCREASE P/S TO 175, CONTINUE 2X CELL & W/A YARD, PSYCH IS CLEAR, GPL: 9.9.

## COMMITTEE'S COMMENTS

Inmate FLORES appeared before Salinas Valley State Prison's (SVSP's) Administrative Segregation Unit (ASU) Institutional Classification Committee (ICC) today for his Program/Annual Review. FLORES stated that his health was good and was willing to proceed. FLORES received his 72-hour notice for the purpose of this review. Prior to committee reviewing and discussing this case, FLORES was introduced to the committee members.

According to FLORES' CDC 114D, he was placed into SVSP's ASU on 3/18/2007 for: Battery on a Peace Officer (gassing). FLORES was found guilty as charged and assessed 150 days LOC. Therefore, ICC elects to Assess and Impose an 11 month Mitigated SHU term with a MERD of 1/12/08 for RVR C07-03-0019, 'Battery on a Peace Officer', dated 3/19/07. The SHU term was Mitigated by 1 month due to no acts of the same or similar in nature within the past 5 years. ICC elects to refer to CSR for transfer to COR/CCI SHU to complete a determinate SHU term. This transfer is considered ADVERSE and he will continue MAX custody and W/G P/G DID throughout transfer. The case was referred to the Monterey County DA and is pending review, if prosecuted SVSP will provide transportation. ICC notes MERD was extended due to a RVR while in ASU.

His Central file does not reflect a pervasive pattern of violence or predatory behavior toward cellmates, therefore he will continue double cell occupancy. He is not a participant in the MHSDS and has a 9.9 GPL. The CDC 812, 812C, 127, 840 and MCSF have been reviewed and updated. His P/S was increased by 10 points, from 165 to 175, due to receiving 2 QP's of favorable work performance (-4), 2 QP's of disciplinary free behavior (-4), & 2 Serious 115s (+18).

Based upon a review of FLORES' CDC 114D, Central File, case factors, and through discussion with him, committee elects to: Refer to CSR for SHU Audit & RX TX COR-SHU / CCI-SHU, Assess & Impose a 11 Month Mitigated SHU term with a MERD of 1/12/08 for RVR C07-03-0019, 'Battery on a Peace Officer', dated 3/19/07, Retain ASU pending CSR review & transfer, Continue MAX custody, DID effective 8/15/07, Increase P/S to 175, Continue 2X Cell & W/A Yard, Psych is clear, GPL: 9.9.

## SHU ASSESSMENT

SHU MERD: 1/12/08 - RVR #: C07-03-0019 (Battery on a Peace Officer)

FOC: 150 days (Division B Offense) - D2D: From 3/19/07 to 8/15/07

SHU Term: 11 month(s), Mitigated (1 month) No acts the same offense

INMATE COPY #4 of 6

At the conclusion of this review, FLORES was informed of his Appeal Rights with regards to this committee's actions. FLORES acknowledged his understanding and agreement with committee's actions.

STAFF ASSISTANT Not Assigned: (Issues not complex and non-participant in MHSDS)

## INMATE CASE FACTORS

CUSTODY	PS/LEVEL	WG/P/G & EFF. DATE	RELEASE DATE	GPL	REGLASS	AGE	ETHNIC	TERMER	NEXT BPT & DATE	
MAX	175/TV	D1D - 8/15/2007	MEPD 9/10/2013	9.9	2/9/2008	35	MEX	1st	IPCH 8/2012	
RECEIVED SVSP	RECEIVED FROM & TYPE OF TX	RECEIVED CDCR	COUNTY OF COMMITMENT	SENTENCE		RESTITUTION				
6/26/2002	CSP-COR - Non-Adverse	1/19/1993	Los Angeles	26 to life		\$0.00				
COMMITMENT OFFENSE										
Murder 1st with a weapon										
PRIOR ARREST HISTORY					DISCIPLINARY HISTORY					
Exhibit Firearm,, Assault w/Deadly Wpn, RSP, DUI					Possession Inmate Mfg Wpn, Mutual Combat, Battery on an Inmate with a Weapon, Battery on an Inmate, Refusal to Obey Orders, Refusal to Submit U/A, Intro. Contraband into ASU, Participating in a stabbing assault, Possession of Inmate Mfg Alcohol, Threatening Staff, Battery on a P/O					
SEX OFFENSES			ARSON OFFENSES			ESCAPES				
Clear as of 2/6/2007			Clear as of 2/6/2007			Clear as of 2/6/2007				
ENEMIES			GANG/TIP			CONFIDENTIAL				
Noted on CDC 812 & CDC 812C			Orange st. loco's			Noted & Reviewed				
MEDICAL			TB - DATE 128C			DENTAL			DPP	
Full Duty			22 - 3/26/07			3			N/A	
PSYCH			MDO			DDP				
Clear			Doesn't Meet MDO Criteria (Lifer)			NCF				
HOUSING		CELL STATUS		CAMP, MSF, CCF, SAP, CCRC, REST. CENTER, & MCCF ELIGIBILITY / VIO Review						
180 (A1)		Double Cell		Camp Eligible: No VIO - LIF		SAP Eligible: No VIO - LIF		MCCF Eligible: No VIO - LIF		
INTEGRATION				MSF Eligible: No VIO - LIF		CCRC Eligible: No VIO - LIF				
				CCF Eligible: No VIO - LIF		Rest. Center Eligible: No VIO - LIF		VIO Review Date: 4/10		
V FRTP				HWD				JOB ASSIGNMENT		
US Citizen				None				Unassigned		

## COMMITTEE MEMBERS

## MEMBERS

CHAIRPERSON

FC G. Ponder and LCSW A. Issacs

RECORDER

J. J. Hughes, CCII

State of California

**APPEAL - FIRST LEVEL REVIEW**  
**SALINAS VALLEY STATE PRISON****DATE:** 11/13/07**NAME:** Flores **CDCR #** H62771**APPEAL LOG #SVSP-D-07-04178****APPEAL DECISION:** Denied**SUMMARY OF APPEAL:** The appellant feels that Facility Captain G. Ponder was in error by not allowing him to speak during ICC on 9/13/07.

The appellant is requesting that Captain G. Ponder be removed from his position as Facility Captain on SVSP Facility C.

**SUMMARY OF INVESTIGATION:** CCII Hughes conducted an interview with the appellant. The appellant had nothing new to add. The appellant was given the opportunity to address the committee on 9/13/07. The appellant began to talk about the guilty findings of the RVR. Captain Ponder instructed him to file an appeal on this matter. The due process of the appellant was not violated. Captain Ponder will not be removed from his position.

**APPEAL RESPONSE:** Denied

If you are dissatisfied with this decision, you may appeal to the Second Level by following the instructions on your appeal form.

  
B. Rankin  
Facility D Captain  
Salinas Valley State Prison  
G. LEWIS  
Correctional Administrator Complex II  
Salinas Valley State Prison

#5 of 6

State of California

## Memorandum

Date: December 14, 2007

To: Inmate Flores, H62771  
Salinas Valley State Prison

Subject: "SECOND LEVEL APPEAL" RESPONSE LOG NUMBER-SVSP-D-07-04178

**ISSUE:** Appellant claims that Captain G. Ponder did not give him the opportunity to be heard during an Institutional Classification Committee.

Appellant is requesting on appeal that Captain Ponder be removed from his position.

**REGULATIONS:** The rules governing this issue are:

CCR 3375 Classification Process

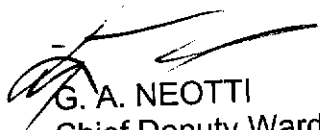
**SUMMARY OF INVESTIGATION:** The First Level of Review (FLR) was completed on November 13, 2007. Correctional Counselor J. Hughes interviewed the appellant at the first level of review. B. Rankin, Correctional Captain was assigned to investigate this appeal at the Second Level of Review. All submitted documentation and supporting arguments have been considered. Additionally, a thorough examination has been conducted regarding the claim presented, and evaluated in accordance with Salinas Valley State Prison (SVSP) Operational Procedures (OP); the California Code of Regulations (CCR); and the Departmental Operations Manual (DOM). The assigned staff member reviewed this appeal, the FLR, and the issues contained therein.

Appellant was given an opportunity to discuss his issues at Institution Classification Committee (ICC) on September 13, 2007. Appellant expressed issues regarding a guilty finding of an RVR. After appellant expressed his issues, Captain Ponder instructed appellant to utilize the appeal process regarding the matter. After a review of this matter, no information was received that would warrant Captain Ponder's removal from facility 'C'.

**DECISION:** The appeal is Denied.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.

#6 of #6

  
G. A. NEOTTI  
Chief Deputy Warden  
Salinas Valley State Prison

21

STATE OF CALIFORNIA CA-22 (9/92)		INMATE REQUEST FOR INTERVIEW		DEPARTMENT OF CORRECTIONS	
DATE	TO	FROM (LAST NAME)		JOB NUMBER	CDC NUMBER
12-27-07	Chief of Inmate Appeals	Flores George			H-6971
HOUSING	BED NUMBER	WORK ASSIGNMENT	FROM	TO	
8. C.	108				
OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.)			ASSIGNMENT HOURS	FROM	TO

Clearly state your reason for requesting this interview.

You will be called in for interview in the near future if the matter cannot be handled by correspondence.

1st question, is I thought Capt. G. Pender had to sign his name on complaint form?  
 2nd question, I had a letter on being issued either my TV or Radio from the ASD in  
 Calaveras Valley State Prison, because it states where allowed a choice in the title 15. It's  
 been over 3 months since I sent it to you? I wanted my TV in S.V.S.P. ASD. Thanks.

INTERVIEWED BY

DATE

DISPOSITION

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

INMATE/PAROLEE  
APPEAL FORM  
CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. SVSP d1. 07-029518  
CDE 107

2. \_\_\_\_\_

2. \_\_\_\_\_

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME: George Flores NUMBER: H-62771 ASSIGNMENT: Ad-Seg UNIT/ROOM NUMBER: D-9-111

A. Describe Problem: I've seen the Dr. NGUYEN here in the ad-seg for a torn muscle in my upper left stomach area, maybe even a fractured rib it hurts bad at times, because of a incident 3-19-07 after I was O.C. pepper sprayed in my cell I slipped. I tried to share this with the Dr. I need ex-rays, he issued me just ibuprofen and would not put me up for ex-rays.

RECEIVED MAY 15 2007

RECEIVED  
OCT 16 2007  
INMATE APPEALS  
BRANCH

If you need more space, attach one additional sheet.

B. Action Requested: To be seen by a different Doctor and put up for ex-rays.

Inmate/Parolee Signature: George Flores H-62771 Date Submitted: 05-14-07

C. INFORMAL LEVEL (Date Received: 5-21-07)

Staff Response: REQUEST DENIED, YOU CANNOT CHOOSE WHAT DR. YOU WANT TO BE SEEN BY. YOU ARE SCHEDULED TO BE FOLLOWED BY FOR YOUR CURRENT MEDICAL NEEDS 6/26/07 IN D9 DR. LINK.

Staff Signature: A-Turner RJ 6/21/07 Date Returned to Inmate: \_\_\_\_\_

## D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

I've seen Dr. NGUYEN again and still does not want to put me up for MRI's something that's better at detecting torn ligaments or muscle. He's just issued me the proven again.

RECD JUL 03 2007

Signature: George Flores H-62771 Date Submitted: 06-30-07  
Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

085

First Level ☐ Granted ☒ P. Granted ☐ Denied ☐ Other

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: 7-9-07 Due Date: 8-13-07  
 Interviewed by: L. Turner RN L. Turner on 07/12/07 Partially Granted. An inmate may not dictate which health care provider will serve his medical needs; however, the primary care provider in D9 has changed. Your appeal is partially granted in that you have been evaluated by Dr. Nguyen (04/24/07 and 06/26/07) and by Dr. Mack (07/17/07) and both have determined that an x-ray is not medically indicated.

DELIVERED AUG 17 2007

Staff Signature: L. Turner RN Title: RN Date Completed: 8/13/07  
 Division Head Approved: M. Byrne Signature: M. Byrne Title: SRN II Returned: 8/14/07  
 Date to Inmate: 8/14/07

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

I'm still in pain from incident 03-19-07 in which after 4 bottles of MK-90C pepper spray was used, I was pinned at in cell C-3-104 after cutting up, then was yanked backwards when removed from the cell by a Correctional Officer. I would like to be seen by an outside doctor on the streets, and get up for an MRI scan, I'm still in pain months later.

Signature: George Flores H. 6277 RECEIVED AUG 31 2007 Date Submitted: 08-23-07

Second Level ☐ Granted ☒ P. Granted ☐ Denied ☐ Other

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 9-4-07 Due Date: 10-1-07

☒ See Attached Letter

Signature: R. Mack DELIVERED OCT - 3 2007 Date Completed: 10/1/07

Warden/Superintendent Signature: [Signature] Date Returned to Inmate: \_\_\_\_\_

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Dissatisfied, I'm no Doctor the reason for me changing from an "x-ray" scan to an "MRI" is because I thought an "x-ray" is more for bone, and an "MRI" is more for muscle and/or tissue in what I've read. I have a torn muscle or tendon below my left lower rib, it hurt a lot at times. 03-19-07 when I pinned out 4 bottles of MK-90C pepper used, the Correctional Officer was angrier that he had to gain and pull me out, he yanked me from a propped up position. Here I am seven months later still in pain trying to get medical treatment by "MRI" or stronger pain medication.

Signature: George Flores H. 6277 Date Submitted: 10-08-07

For the Director's Review, submit all documents to: Director of Corrections  
 P.O. Box 942883  
 Sacramento, CA 94283-0001  
 Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☒ Denied ☐ Other☒ See Attached Letter

23.

CDC 802 (12/87)

SVSP INMATE APPEALS OFFICE RECEIVED COMPLETED RESPONSE ON	
OCT 03 2007	
1 <sup>ST</sup> LVL <input type="checkbox"/> Date: <u>2<sup>ND</sup> LVL</u> <input checked="" type="checkbox"/>	

JAN 08 2008

## INMATE APPEAL ROUTE SLIP

**To: CTC**

Date: July 9, 2007

**From: INMATE APPEALS OFFICE**

**Re: Appeal Log Number SVSP-D-07-02951 By Inmate FLORES, H62771**

Please assign this appeal to appropriate staff for **FIRST** level response.

Appeal Issue: MEDICAL

Due Date: **08/15/2007**

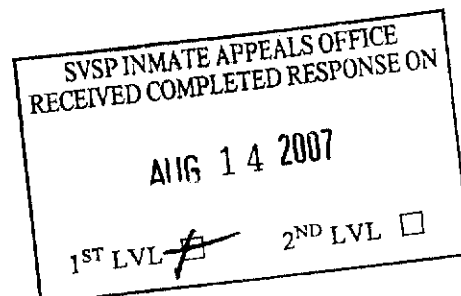
Special Needs:

**STAFF INSTRUCTIONS: Per Director's Rule 3084.5(f) (2) first level appeal review requires a personal interview with the inmate unless the appeal is granted.** This policy is not within the institution's jurisdiction and cannot be waived. Director's Rule 3084.5(f) (3) provides that a telephonic interview may be conducted if the inmate is not available in person.

Begin response with GRANTED, DENIED, PARTIALLY GRANTED or WITHDRAWN. When complete, return appeal to the Appeals Office. All first level appeals require signature of the Division Head. Appeals that are incomplete will be returned for appropriate completion.

Refer to D.O.M. 54100 for instructions.

T. VARIZ, CC-II / E. MEDINA CC-II  
Appeals Coordinators  
Salinas Valley State Prison



State of California

Department of Corrections and Rehabilitation

**Memorandum**

Date: October 2, 2007

To: Inmate Flores, H62771  
Salinas Valley State Prison

Subject: SECOND LEVEL APPEAL RESPONSE LOG NUMBER-SVSP-D-07-2951

**ISSUE:**

It is the appellant's position that he sustained injuries on March 19, 2007 after a custodial incident. He states that he has been seen for a torn muscle in his left upper stomach area, maybe even a fractured rib. He states that he has shared this with the provider and that he needs an x-ray. It is his statement that he was only issued Ibuprofen and was not ordered an x-ray.

The appellant requests to be seen by a different doctor and that an x-ray is ordered.

**INTERVIEWED BY:** L. Turner, Registered Nurse on July 12, 2007.

**REGULATIONS:** The rules governing this issue are:

**California Code of Regulations, Title 15 Section:**

3350 Provision of Medical Care and Definition

3350.1 Medical Treatment/Service Exclusions

3354.1 Health Care Responsibilities and Limitations

**SUMMARY OF INVESTIGATION:**

The First Level of Review (FLR) was completed on August 13, 2007. Dr. J. Mack, MD, Physician and Surgeon was assigned to investigate this appeal at the Second Level of Review. All submitted documentation and supporting arguments have been considered. Additionally, a thorough examination has been conducted regarding the claim presented, and evaluated in accordance with Salinas Valley State Prison (SVSP) Operational Procedures (OP); the California Code of Regulations (CCR); and the Departmental Operations Manual (DOM).

The appellant was advised at the First Level of Response that the provider in his facility D-9 had changed. It is noted that the appellant was evaluated by Dr. D. Nguyen and Dr. Mack (7/1/07) and both determined that an x-ray was not medically indicated.

**Inmate Flores, H62771**  
**Log No.: SVSP-D-07-2951**  
**Page 2**

The appellant elevated to the Second Level of Review on August 23, 2007. The appellant states that he is still in pain from the March incident. The appellant changes his request at the Second Level of Review.

The request is partially granted. In that the appellant was seen by a second physician and not be the initial physician as the appellant requested in his appeal. The review of the unit health record medical history revealed that the appellant was evaluated by two different doctors. Imaging studies are not indicated in this instance. The original request by the appellant was for x-ray then later an MRI by an outside provider. The appellant is advised that there is no documentation to support medical necessity of imaging studies.

**DECISION:** The appeal is **Partially Granted.**

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.



CHARLES DUDLEY LEE, MD  
Health Care Manager  
Salinas Valley State Prison

## INMATE APPEAL ROUTE SLIP

**To: CTC**

Date: September 4, 2007

From: INMATE APPEALS OFFICE

Re: Appeal Log Number **SVSP-D-07-02951** By Inmate FLORES, H62771

Please assign this appeal to appropriate staff for **SECOND** level response.

Appeal Issue: MEDICAL

Due Date: **10/01/2007**

Special Needs:

**STAFF INSTRUCTIONS:**

Second level appeals require a personal interview if not afforded at the first level. Begin your response with: GRANTED, DENIED, PARTIALLY GRANTED or WITHDRAWN. When complete, return to Appeals Office. Appeals that are incomplete will be returned to the responding staff for appropriate completion. Refer to D.O.M. 54100 for instructions.

T. VARIZ, CC-II / E. MEDINA CC-II  
Appeals Coordinators  
Salinas Valley State Prison

State of California

Department of Corrections and Rehabilitation

# Memorandum

Date: October 2, 2007

To: Inmate Flores, H62771  
Salinas Valley State Prison

Subject: SECOND LEVEL APPEAL RESPONSE LOG NUMBER-SVSP-D-07-2951

**ISSUE:**

It is the appellant's position that he sustained injuries on March 19, 2007 after a custodial incident. He states that he has been seen for a torn muscle in his left upper stomach area, maybe even a fractured rib. He states that he has shared this with the provider and that he needs an x-ray. It is his statement that he was only issued Ibuprofen and was not ordered an x-ray.

The appellant requests to be seen by a different doctor and that an x-ray is ordered.

**INTERVIEWED BY:** L. Turner, Registered Nurse on July 12, 2007.

**REGULATIONS:** The rules governing this issue are:

**California Code of Regulations, Title 15 Section:**

3350 Provision of Medical Care and Definition

3350.1 Medical Treatment/Service Exclusions

3354.1 Health Care Responsibilities and Limitations

**SUMMARY OF INVESTIGATION:**

The First Level of Review (FLR) was completed on August 13, 2007. Dr. J. Mack, MD, Physician and Surgeon was assigned to investigate this appeal at the Second Level of Review. All submitted documentation and supporting arguments have been considered. Additionally, a thorough examination has been conducted regarding the claim presented, and evaluated in accordance with Salinas Valley State Prison (SVSP) Operational Procedures (OP); the California Code of Regulations (CCR); and the Departmental Operations Manual (DOM).

The appellant was advised at the First Level of Response that the provider in his facility D-9 had changed. It is noted that the appellant was evaluated by Dr. D. Nguyen and Dr. Mack (7/1/07) and both determined that an x-ray was not medically indicated.

STATE OF CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION  
INMATE APPEALS BRANCH  
P. O. BOX 942883  
SACRAMENTO, CA 94283-0001

**DIRECTOR'S LEVEL APPEAL DECISION**

Date: **JAN 08 2008**

In re: George Flores, H62771  
California Correctional Institution  
P.O. Box 1031  
Tehachapi, CA 93581

IAB Case No.: 0711039

Local Log No.: SVSP-07-02951

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner V. O'Shaughnessy. All submitted documentation and supporting arguments of the parties have been considered.

**I APPELLANT'S ARGUMENT:** It is the appellant's position that he sustained injuries on March 19, 2007 after a custodial incident. He states that he has been seen for a torn muscle in his left upper stomach area, maybe even a fractured rib. He states that he has shared this with the provider and that he needs an x-ray. The appellant states that he was only issued Ibuprofen and was not ordered an x-ray. The appellant requests to be seen by a different physician and that an x-ray is ordered.

**II SECOND LEVEL'S DECISION:** The reviewer found that the appellant was evaluated by two different doctors. Imaging studies were not indicated in this instance. The original request by the appellant was for an x-ray, then later a magnetic resonance imaging by an outside provider. The appellant is advised that there is no documentation to support the medical necessity of imaging studies. The appeal was granted in part at the Second Level of Review (SLR) on October 2, 2007.

**III DIRECTOR'S LEVEL DECISION:** Appeal is denied.

**A. FINDINGS:** The Director's Level of Review reviewed the appellant's appeal complaint and the SLR response. It is apparent that physicians have examined the appellant and provided health care in accordance with their professional opinions. The appellant was evaluated by Dr. Nguyen and by Dr. Mack ; they both determined that an x-ray was not medically indicated. An inmate should not expect a physician to treat him in accordance with the inmate's judgment. The physician has the experience and license to determine the course of medical treatment. The appellant is encouraged to monitor his condition and notify medical staff of any changes. No modification to the SLR is warranted.


The appellant has added new issues and requests to his appeal. The additional requested action is not addressed herein as it is not appropriate to expand the appeal beyond the initial problem and the initially requested action (CDC Form 602, Inmate/Parolee Appeal Form, Sections A and B).

**B. BASIS FOR THE DECISION:**  
California Code of Regulations, Title 15, Section: 3350, 3354

**C. ORDER:** No changes or modifications are required by the Institution.

GEORGE FLORES, H62771  
CASE NO. 0711039  
PAGE 2

This decision exhausts the administrative remedy available to the appellant within CDCR.

  
N. GRANIS, Chief  
Inmate Appeals Branch

cc: Warden, CCI  
Health Care Manager, CCI  
Appeals Coordinator, CCI  
Medical Appeals Analyst, CCI  
Appeals Coordinator, SVSP  
Medical Appeals Analyst, SVSP

VERIFICATION

(C.C.P. §§ 446, 2015.5; 28 U.S.C. § 1746)

I, George Flores, declare under the penalty of perjury that:

I am the Declarant in the attached matter; I have read the foregoing document(s) and know the contents thereof; that the same is true of my own personal knowledge, and if called to testify as to the contents thereof, I could do so competently as a sworn witness.

Executed this Sunday day of May 17, 2008, at Kern Valley State Prison, Delano, CA. 93216-5101.

George Flores  
Declarant

.....  
DECLARATION OF SERVICE BY MAIL

(C.C.P. §§ 446, 2015.5; 28 U.S.C. § 1746)

I, George Flores, declare: That I am a resident of Kern Valley State Prison, Delano, California; I am over the age of 18 years; ( ☒ I am / ☐ I am not ) a party to the above entitled action; My address is P.O. Box 5101, Delano, California 93216-5101. I served the attached document(s) entitled: George Flores Plaintiff, v. Warden Eyan's, sued Individually; Capt. Ponder's, sued Individually; Lt. Celaya, sued Individually; Sgt. Atchley-sued Individually; Correctional Officer J. Rodriguez, sued Individually;  
And Does 1-10 Inclusive Defendants

On the persons/parties specified below by placing a true copy of said document(s) into a sealed envelope with the appropriate postage affixed thereto and placing said envelope(s) into the United States Mail in a deposit box provided for at the Kern Valley State Prison, Delano, California, addressed as follows:

Clerk Of The United States District Court For The Northern District of California  
450 Golden Gate Avenue, Box 36060,  
San Francisco, Ca. 94102

There is First Class mail delivery service by the United States Mail at the places so addressed and/or regular communication by mail between the place of mailing and the addresses above. I declare under the penalty of perjury that the foregoing is true and correct and that I executed this service on this Wens day of May 21, 2008, at Kern Valley State Prison, Delano, California 93216-5101.

George Flores  
Declarant

George Flores H-62771  
San Valley State Prison  
P.O. Box 5101 AG-216  
Elano, Ca. 93216

Clerk of the United States District  
Court for the Northern District of California  
450 Golden Gate Avenue, Box 36060  
San Francisco, Ca. 94102